IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1551 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

POONAMCHAND AMRATLAL SHAH

Versus

PRAVINBHAI AMBALAL PATEL

Appearance:

MR KETAN D SHAH for Petitioner

MR CJ VIN for Respondent No. 1

MR KP RAVAL, APP for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. This is an application under section 482 of the Code of Criminal procedure at the instance of the original accused against whom a complaint was filed by the first opponent herein, alleging that the accused had committed offences under sections 406, 420 and 504 of

IPC. The Criminal Court issued process after taking cognizance of the complaint.

2. The petitioner herein, the original accused, challenges the issuance of process on the part of the trial court and seeks to have the same quashed and set aside on the ground that the complaint does not disclose any offence on the face of it and in any case on the facts of the case the complaint is filed only for the purpose of harassment and for no other purpose.

3. On the facts and circumstances of the case as they appear on record, it appears that there is considerable substance in what the petitioner contends.

4. It is on record that the complainant is a Director of a private limited company which was engaged in the business of manufacturing certain type of machinery in respect of which the firm (in which the accused was a partner) had issued an order for specific machinery. The firm of the accused had also made some advance payment alleged to be Rs.35,000/-. However, since the said machinery was not delivered and various disputes arose therefrom, the firm of the accused cancelled the order and demanded the refund of the advance payment. Since the supplier company failed to make the refund, the firm of the accused as plaintiff filed Summary Suit No.3589/95 in the City Civil Court at Ahmedabad praying for a decree in the principal amount of Rs.35000/- together with costs and interest, etc. The first respondent company appeared in the said suit and filed an application for leave to defend, and after hearing the parties on summons for judgement, the City Civil Court was pleased to grant conditional leave to defend. Inasmuch as the defendant in the suit failed to comply with the condition, a decree for the amount prayed for was passed in favour of the plaintiff (the firm of the accused). A certified copy of the said decree is taken on record. It is stated at the bar that the matter is now settled and the defendant of the suit (the complainant) has paid Rs.35000/- being the principal amount in the suit and this has been accepted by the present petitioner (original plaintiff) in full and final settlement of the amount due in the decree. It is also pertinent to note that the order which had been placed by the firm of the accused was by the other partner viz. Kishan Shah, and not by the present accused. The present accused is an elderly man suffering from cancer.

5. It is also relevant to note that the summary suit was filed as early as 29th June 1995, whereas the

complaint from which the present application arises was filed as late as 30th March 1996. Shri Kishan Shah who had in fact placed the order with the first respondent company had already expired on 17th June 1993. Thus, it becomes obvious that the complaint was filed as a counter-blast to the summary suit filed 9 months earlier, and on the date of the complaint the complainant very probably was aware of the fact that Kishan Shah had expired, and was therefore not joined as co-accused. The complaint, therefore, appears to have been filed only as a counter-blast to the summary suit.

6. It is, therefore, obvious that the present complaint has been filed only with a view to create a harassment of an elderly person who is suffering from cancer.

7. Even otherwise the Supreme Court had held in the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, reported at AIR 1992 SC 1815 to the effect that the trial court must consider the relevant facts and circumstances before issuing process, and if such process is issued mechanically on the basis of a complaint filed as a vendetta to harass persons, such complaint requires to be quashed.

8. Even otherwise the Supreme Court has held in the case of G. Sagar Suri Vs. State of UP reported at 2000(1) Supreme Today page 322, that where it is found that such complaints, pertaining essentially to civil disputes have been filed for the purpose of exerting pressure, such complaints deserve to be quashed.

9. On the facts and circumstances of the case I am satisfied that the complaint in question has been filed merely to harass the accused and to bring undue pressure upon him.

10. In the premises aforesaid, the complaint in question is quashed and set aside and the application is allowed. Rule is made absolute accordingly.

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